Teaching the Affordable Care Act (ObamaCare) Case

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Available at: https://works.bepress.com/corey_ciocchetti/26/
Article I:
Commerce & Tax powers of Congress
Constitution & Business
FANTASY SCOTUS
Cases & Controversies
Constitution & Business
JUDGES LOOK FOR:

- STANDING
- RIPENESS
- MOOTNESS
Just the Facts

all 100 or so pages . . .

Constitution & Business
U.S. HEALTH CARE: SERIOUS PROBLEMS

COST SHIFTING

1. People w/o insurance will need health care
2. E.R. must help them
3. Hospitals pass costs to insurers
4. Insurers pass costs to policy holders

UNDERWRITING COSTS

1. Pre-existing conditions doom chances
2. Expensive to determine who to insure
3. Insurance companies do this anyway . . . or else they will go out of business
4. Others go without insurance (see cost shifting)
UNINSURED AMERICANS: AS OF 3/13
### Title I
- **Quality, Affordable Health Care for All Americans**

### Title II
- **Role of Public Programs**

### Title III
- **Improving Quality & Efficiency of Health Care**

### Title IV
- **Chronic Disease Prevention & Improving Pub. Health**

### Title V
- **Health Care Workforce**

### Title VI
- **Transparency & Program Integrity**

### Title VII
- **Improving Access to Innovative Medical Therapies**

### Title IX
- **Community Living Assistance Services & Supports**

### Title IX
- **Revenue Provisions**
CONGRESS TO THE RESCUE . . .
PATIENT PROTECTION & AFFORDABLE CARE ACT
THE FIX: INDIVIDUAL MANDATE

INDIVIDUAL MANDATE: Individuals must maintain minimum coverage.

EXCLUSIONS:
- Non-Citizens
- Medicaid/Medicare
- Employer Insurance

EMPLOYER INSURANCE

% OF HOUSEHOLD INCOME
2016 = 2.5%

FLOOR = SPECIFIC $ AMOUNT
2016 ≥ $695

CEILING = AVG. ANNUAL POLICY
2016 = 60% OF 10 SERVICES

NO CRIMINAL PENALTIES

EXEMPTIONS FOR POOR, INDIAN TRIBES . . .

EXCEPTIONS:
- Prisoners
- Undocumented Aliens
- Religions
THE FIX: MEDICAID EXPANSION

MEDICAID EXPANSION

states must meet new conditions of federal government

FEDERAL GOVERNMENT DICTATES:

SERVICES STATE MUST PROVIDE

COST OF CARE

WHO RECEIVES CARE

NEW: UP TO 133% OF FEDERAL POVERTY LINE COVERED

NEW: LOSE ALL MEDICAID FUNDS FOR NON-COMPLIANCE

ALL STATES PARTICIPATE

NEEDY FAMILIES

DISABLED

ELDERLY

CHILDREN

PREGNANT WOMEN

MEDICAID COVERED:

MEDICAID EXPANSION

OR LOSE ALL MEDICAID FUNDS

CHILDREN

ELDERLY

NEEDY FAMILIES

PREGNANT WOMEN

11
### Federal Poverty Level

#### 48 Contiguous States and the District of Columbia

<table>
<thead>
<tr>
<th>Family Size</th>
<th>25%</th>
<th>50%</th>
<th>75%</th>
<th>81%</th>
<th>100%</th>
<th>133%</th>
<th>175%</th>
<th>200%</th>
<th>250%</th>
<th>300%</th>
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<tbody>
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<td>1</td>
<td>$2,873</td>
<td>$5,745</td>
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<td>$11,633</td>
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<td>$27,570</td>
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<td>$31,590</td>
<td>$42,015</td>
<td>$55,283</td>
<td>$63,180</td>
<td>$78,975</td>
<td>$94,770</td>
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<td>7</td>
<td>$8,903</td>
<td>$17,805</td>
<td>$26,708</td>
<td>$28,844</td>
<td>$35,610</td>
<td>$47,361</td>
<td>$62,318</td>
<td>$71,220</td>
<td>$89,025</td>
<td>$106,830</td>
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<td>8</td>
<td>$9,908</td>
<td>$19,815</td>
<td>$29,723</td>
<td>$32,100</td>
<td>$39,630</td>
<td>$52,708</td>
<td>$69,353</td>
<td>$79,260</td>
<td>$99,075</td>
<td>$118,890</td>
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</tbody>
</table>
POPULARITY CONTEST: BY PARTY

The Supreme Court Overturning the Recent Health Care Law by Political Affiliation

- Favor
- Oppose
- Don’t know/Refused

All Americans:
- Favor: 35
- Oppose: 43
- Don’t know/Refused: 21

Tea Party:
- Favor: 71
- Oppose: 13
- Don’t know/Refused: 16

Republican:
- Favor: 61
- Oppose: 22
- Don’t know/Refused: 16

Independent:
- Favor: 33
- Oppose: 47
- Don’t know/Refused: 21

Democrat:
- Favor: 62
- Oppose: 21
- Don’t know/Refused: 16

Source: Public Religion Research Institute, Religion & Politics Tracking Survey, June 2012 (N=1,022)
At Three Years, Opinion On ACA Remains Divided

As you may know, a health reform bill was signed into law in 2010. Given what you know about the health reform law, do you have a generally favorable or generally unfavorable opinion of it?
Arguments

★ Petitioner’s Arguments
★ Respondent’s Arguments

Constitution & Business
COMMERCE CLAUSE: ARGUMENTS

PETITIONER

1. Non-insureds not active in health market
2. Mandate forces people into commerce
3. No limiting principle to commerce clause
4. Government has not done this before
5. Food/shelter not purchased for their own sake . . . purchased to meet needs

RESPONDENT

1. Failure to buy insurance affects commerce (creates cost-shifting problem)
2. Non-insureds will be active in health market
3. Health insurance & health care intertwined
5. So . . . insurers must raise premiums greatly
6. If you don’t buy this argument . . . it’s a tax
National Federation of Independent Businesses v. Sebelius

★ Petitioner’s Brief
★ Respondent’s Brief
★ Oral Argument
★ Lower Court Opinion
★ Supreme Court Opinion

Constitution & Business
WHO’S IN: ACA LAWSUIT

Included in 2011 federal lawsuit

[Map showing states included in the ACA lawsuit as of 2011]
PROCEDURE: 11TH CIRCUIT CASE

- Federal District Court
  - Mandate exceeds Congress’ power
  - Mandate cannot be severed

- 11th Circuit Court of Appeals
  - Mandate exceeds Congress’ commerce power
  - Mandate does not impose a tax
  - Mandate can be severed
  - Medicaid expansion valid spending

- Mandate
  - Act struck down
  - Rest of act constitutional

- Dissent
  - Substantially affects economic activity
PROCEDURE: THE ISSUES

IS MANDATE CONSTITUTIONAL?

IS MEDIACID EXPANSION CONSTITUTIONAL?

CAN MANDATE BE SEVERED IF INVALID?

DOES ANTI-INJUNCTION ACT BAR CONSIDERATION?

COMMERCE CLAUSE

TAX CLAUSE

SPENDING CLAUSE

AMICUS APPOINTED

AMICUS APPOINTED
WAIT . . . WHAT???

✴

JOINED PART IV

✴

ALONE IN PARTS III(A), III(B) & III(D) | DISSENTERS DID NOT JOIN ANY OF ROBERTS' OPINION

✴

CONCURRING IN PART

✴

DISSenting

✴

JOINED CONCURRENCE PARTS I, II, III & IV NOT V ON MEDICAID

✴

JOINED PARTS I, II, & III(C)
ANTI-INFRINGEMENT ACT DOES NOT APPLY

MEDICAID EXPANSION FUNDING SCHEME STRUCK DOWN

PPACA UPHELD AS A TAX

MEDICAID EXPANSION STILL AN OPTION | RULING ON NARROWEST GROUNDS STANDS
ANTI-INJUNCTION ACT: THE SET UP

"NO SUIT FOR THE PURPOSE OF RESTRAINING THE ASSESSMENT OR COLLECTION OF ANY TAX SHALL BE MAINTAINED IN ANY COURT BY ANY PERSON . . ."
ANTI-INJUNCTION ACT: ARGUMENTS

**AMICUS**

1. Penalty not collectable until 2014
2. Suit restrains future collection of $$$
3. Penalty functions like a tax
4. Taxes include assessable penalties
5. So... the legal challenge barred by AIA

**PETITIONER & RESPONDENT**

1. Penalty is not a tax... says Congress
2. This is Congress’ law... it gets to decide
3. Congress used the word tax elsewhere in ACA
4. IRS code treats taxes & penalties differently
POLICE POWER

TENTH AMENDMENT

STATES RETAIN “POLICE” POWER

CRIME

ZONING

SCHOOLS

RESIDENCY

✴ STATES DO NOT NEED CONSTITUTIONAL AUTHORITY

✴ CONSTITUTIONAL AMENDMENTS PROHIBIT STATE POWER

✴ STATES GET TO EXPERIMENT

✴ STATE GOVERNMENT CLOSER TO CITIZENS
COMMERCE CLAUSE: THE LAW

- **NO FEDERAL POLICE POWER**
- **SO . . . ENUMERATED POWERS MUST HAVE LIMITS**

**COMMERCE CLAUSE:**

- **CONGRESS MAY REGULATE INTERSTATE COMMERCE**
- **CHANNELS OF INTERSTATE COMMERCE**
- **PERSONS/THINGS IN INTERSTATE COMMERCE**
- **ACTIVITIES SUBSTANTIALLY AFFECTING INTERSTATE COMMERCE**
- **WICKARD V. FILBURN**

**BROAD POWER**
### COMMERCE CLAUSE: THE SET UP

**Activities with substantial affects on interstate commerce**

<table>
<thead>
<tr>
<th>Activities that themselves affect I.C.</th>
<th>Activities that affect I.C. when aggregated</th>
<th>Activities that create commerce</th>
</tr>
</thead>
<tbody>
<tr>
<td>* Civil Rights Act</td>
<td>* Wickard</td>
<td>* Non-insureds will be in health market eventually</td>
</tr>
<tr>
<td>* Operating a Hotel</td>
<td>* Federal law banned excessive wheat consumption @ home</td>
<td>* This creates future commerce</td>
</tr>
<tr>
<td>* Employment</td>
<td>* Increase price by limiting wheat supply</td>
<td></td>
</tr>
<tr>
<td></td>
<td>* Eating more of your wheat decreases demand in aggregate &amp; lowers price</td>
<td></td>
</tr>
</tbody>
</table>

All soon in market for:
- Food
- Clothing
- Shelter
- Transportation
- Energy
COMMERCE CLAUSE: THE HOLDING

ACTIVITIES SUBSTANTIALLY AFFECTING INTERSTATE COMMERCE

ACTIVITIES THAT CREATE COMMERCE INVALID

ARTICLE I REQUIRES COMMERCE ALREADY EXIST

CONGRESS CANNOT CREATE COMMERCE

OTHER CONSTITUTIONAL PROVISIONS THEN SUPERFLUOUS

GOING WITHOUT INSURANCE IMPACTS I.C. BUT OUTSIDE ART. I POWERS

CONGRESS COULD THEN MANDATE PURCHASE OF VEGGIES OR SHELTER

NO LIMIT TO COMMERCE CLAUSE

STATES COULD CREATE COMMERCE TO REGULATE
NECESSARY & PROPER

ARTICLE I §8:
ENUMERATED POWERS

LAW MUST BE NECESSARY
AND
PROPER

CONGRESS CAN ENACT LAWS INCIDENTAL TO ENUMERATED POWERS

MANDATE NECESSARY TO ACT’S INSURANCE REFORMS

BUT . . . EXPANSION OF FEDERAL POWER IN THIS WAY NOT PROPER
**TAX POWER: THE SET UP**

**TAX CLAUSE:**
- CONGRESS MAY TAX

**SPENDING CLAUSE:**
- CONGRESS MAY SPEND

**CONGRESS’ BROAD POWER TO TAX**

**TAX AREAS IT CANNOT CONTROL**

**CONGRESS CAN CONDITION FUNDS IT SPENDS**

**CAN INDUCE STATES TO ACT IN WAYS CONGRESS CANNOT IMPOSE**

**C.C. = INDIVIDUALS MUST PURCHASE INSURANCE**

**TAX = NOT REQUIRED TO BUY INSURANCE | PAY A TAX FOR NOT PURCHASING INSURANCE**

**COURT MUST GIVE STATUTE READING THAT WILL SAVE IT**
TAX POWER: THE HOLDING

LOOKS LIKE A TAX
BASED ON:
✴ INCOME
✴ DEPENDENTS
✴ FILING STATUS

PAID TO & ENFORCED BY IRS

GENERATES REVENUE

NOT UNLAWFUL TO SKIP INSURANCE & PAY TAX

TAX NOT PUNITIVE

TAX POWER > COMMERCE POWER

ANTI INJUNCTION ACT = CONGRESS CHOOSES WHETHER IT’S A TAX

ARTICLE I § 8 TAX POWER = CONGRESS CANNOT MAKE IT A PENALTY IF IT FUNCTIONS LIKE A TAX

VIEW SUBSTANCE & APPLICATION . . . NOT LABEL
CONGRESS CANNOT FORCE STATES TO GOVERN

CONGRESS CAN INDUCE STATES TO ACT IN WAYS IT CANNOT REQUIRE

SPENDING CLAUSE

HELD:
EXPANSION ALLOWED
PORTION SEVERED
ONLY TAKE NEW $$

LOOK FOR COMPULSION | STATES MUST HAVE GENUINE CHOICE

STATE OFFICIALS ACCOUNTABLE FOR FEDERAL ACTION

NOT IN THE “GENERAL WELFARE”

MEDICAID CHANGES IS REALLY A NEW HEALTH CARE PROGRAM
PUBLIC POLICY: THE MERITS

PROS

CONS
next: immigration [Arizona v. U.S.]
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